

No. 16165 ✓

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA, Appellant,

vs.

SECURITY-FIRST NATIONAL BANK,
Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division

FILED

NOV 21 1958

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States District Court, Southern District
of California, Central Division

Civil No. 18659-HW

UNITED STATES OF AMERICA,
Plaintiff,
vs.

SECURITY-FIRST NATIONAL BANK OF
LOS ANGELES, a National Banking Asso-
ciation, Defendant.

COMPLAINT FOR MONEY ON FORGED
CHECKS (TREASURY)

Comes now the United States of America, plain-
tiff above named, and for cause of action against
the defendant above named complains and alleges
as follows:

I.

That this is a suit of a civil nature, commenced
by the United States of America, and this Court
has jurisdiction of this action by virtue of the pro-
visions of Title 28, § 1345, United States Code.

II.

That during all times herein mentioned United
States of America was and now is a corporation
sovereign.

III.

That the defendant, Security - First National
Bank of [2] Los Angeles, at all times herein men-
tioned was and now is a national banking associa-

tion, transacting business in the County of Los Angeles, State of California.

IV.

That all of the transactions herein involved occurred in the County of Los Angeles, in the State and Southern District of California, and within the jurisdiction of this Court.

V.

That the defendant above named is indebted to the plaintiff in the sums hereinafter set forth, with interest thereon at the rate of six per cent per annum from the dates hereinafter set forth opposite said sums:

| | | | |
|----------|---------|----------|---------|
| \$192.76 | 1/15/49 | \$119.95 | 3/24/49 |
| 200.45 | 3/26/49 | 202.40 | 3/31/49 |
| 218.55 | 3/31/49 | 204.05 | 4/ 5/49 |
| 206.35 | 3/26/49 | 132.45 | 3/25/49 |
| 123.30 | 3/24/49 | 187.75 | 4/18/49 |
| 151.51 | 1/ 4/49 | 240.31 | 1/ 4/49 |
| 123.00 | 3/25/49 | 165.05 | 3/18/49 |
| 109.40 | 3/24/49 | 231.35 | 3/18/49 |
| 193.55 | 3/23/49 | 183.65 | 3/18/49 |
| 131.15 | 3/18/49 | 126.41 | 1/ 7/49 |
| 202.02 | 1/ 7/49 | 290.47 | 1/ 5/49 |
| 217.35 | 3/31/49 | 155.30 | 4/25/49 |
| 139.61 | 1/ 5/49 | 92.70 | 4/ 5/49 |
| 160.10 | 3/18/49 | 213.49 | 1/ 4/49 |
| 192.86 | 1/ 7/49 | 173.73 | 1/ 5/49 |
| 153.15 | 4/ 5/49 | 233.10 | 3/26/49 |
| 101.40 | 3/16/49 | 193.91 | 1/ 7/49 |

| | | | |
|--------|---------|--------|---------|
| 158.05 | 3/25/49 | 132.05 | 4/ 5/49 |
| 116.97 | 4/ 2/49 | 136.80 | 3/16/49 |
| 177.35 | 4/ 5/49 | 100.31 | 1/15/49 |
| 207.35 | 4/ 8/49 | 179.43 | 1/15/49 |
| 228.70 | 3/31/49 | 185.30 | 4/18/49 |
| 206.25 | 3/31/49 | 211.15 | 3/18/49 |
| 201.15 | 3/18/49 | 79.38 | 1/15/49 |
| 149.35 | 3/26/49 | 133.10 | 3/18/49 |
| 113.14 | 1/ 5/49 | 84.00 | 4/18/49 |
| 139.75 | 3/24/49 | | |
| 187.89 | 1/ 5/49 | | |
| 200.10 | 3/31/49 | | |
| 132.95 | 3/26/49 | | |
| 123.05 | 3/26/49 | | |
| 173.00 | 3/23/49 | | |

upon a written contract of guarantee and for money paid by mistake under the following circumstances:

VI.

That on the dates hereinafter set forth checks were drawn on the Treasurer of the United States by Paul D. Banning, Chief Disbursing Officer, Symbol 312, and by A. H. Hoiland and H. Rogers, Regional Disbursing Officers, Symbols 412 and 415, respectively, U. S. Treasury Department, payable to the order of the payees hereinafter listed, photo-static copies of which checks are annexed hereto and marked "Exhibit A" and made a part hereof by reference; that the following list sets forth the check number, the date of issuance, the amount, symbol and name of payee:

| Check No. | Date | Amount | Symbol | Payee |
|------------|----------|----------|--------|-------------------------------------|
| 18,435,026 | 12/23/48 | \$192.76 | 312 | Homer C. Alexander |
| 10,393,893 | 3/16/49 | 200.45 | 412 | Leslie C. & Lila L. Allen |
| 11,058,865 | 3/11/49 | 218.55 | 415 | Theodore F. Armour |
| 11,098,442 | 3/16/49 | 206.35 | 415 | Ernest J. Bell |
| 11,000,832 | 3/ 8/49 | 123.30 | 415 | James E. Brooks |
| 18,372,324 | 12/ 6/48 | 151.51 | 312 | Steven H. Brown |
| 10,328,967 | 3/ 8/49 | 123.00 | 412 | Alsen C. Butler |
| 11,059,695 | 3/11/49 | 109.40 | 415 | George C. Butler |
| 11,036,939 | 3/10/49 | 193.55 | 415 | Benjamin D. Carmena |
| 10,328,969 | 3/ 8/49 | 131.15 | 412 | Lionel T. Frost |
| 18,435,027 | 12/23/48 | 202.02 | 312 | George C. Fryer |
| 10,393,963 | 3/16/49 | 217.35 | 412 | Alfred D. & Flora B. Haase |
| 18,372,326 | 12/ 6/48 | 139.61 | 312 | Joseph T. Harrison |
| 10,316,836 | 3/ 7/49 | 160.10 | 412 | Melvin C. Hartford |
| 18,435,028 | 12/23/48 | 192.86 | 312 | Thomas C. Henderson |
| 10,393,985 | 3/16/49 | 153.15 | 412 | George H. & Theresa P. Jefferson |
| 10,303,449 | 3/ 4/49 | 101.40 | 412 | Ernest J. & Dorothy J. Johnson |
| 11,053,823 | 3/11/49 | 158.05 | 415 | Amos L. Johnson |
| 10,434,520 | 3/18/49 | 116.97 | 412 | Jack T. Johnson |
| 10,393,989 | 3/16/49 | 177.35 | 412 | Napoleon F. & Ruby M. Jones |
| 10,507,398 | 3/25/49 | 207.35 | 412 | Theodore L. & Bertha I. Jones |
| 10,467,124 | 3/23/49 | 228.70 | 412 | Melvin C. Kaufman |
| 10,263,291 | 3/22/49 | 206.25 | 415 | L. J. & L. M. Kirkland |
| 11,012,189 | 3/ 8/49 | 201.15 | 415 | Leon B. Lamonica |
| 11,130,502 | 3/17/49 | 149.35 | 415 | Macie C. La Motte |
| 18,372,321 | 12/ 6/48 | 113.14 | 312 | Emery C. Lewis |
| 10,322,859 | 3/ 7/49 | 119.95 | 412 | Sidney A. Lipscomb |
| 10,431,300 | 3/18/49 | 202.40 | 412 | James H. McIntyre |
| 10,431,299 | 3/18/49 | 204.05 | 412 | Harold M. Manda |
| 10,328,966 | 3/ 8/49 | 132.45 | 412 | Roy C. Manisco |
| 10,431,301 | 3/18/49 | 187.75 | 412 | Tony L. Mareno |
| 18,372,327 | 12/ 6/48 | 240.31 | 312 | Olliver A. Martin |
| 11,006,787 | 3/ 8/49 | 165.05 | 415 | Thomas R. Mason |
| 10,328,970 | 3/ 8/49 | 231.35 | 412 | Morris E. Matthews |
| 10,328,971 | 3/ 8/49 | 183.65 | 412 | Paul R. Mencer |
| 18,372,323 | 12/ 6/48 | 126.41 | 312 | Eugene Montague |
| 18,372,325 | 12/ 6/48 | 290.47 | 312 | Arthur Mouton |

| Check No. | Date | Amount | Symbol | Payee |
|------------|----------|--------|--------|---------------------|
| 10,259,476 | 3/22/49 | 155.30 | 415 | L. C. & L. P. Moyas |
| 11,098,436 | 3/16/49 | 92.70 | 415 | Claude C. Mullins |
| 18,372,328 | 12/ 6/48 | 213.49 | 312 | Ernest Munson |
| 18,372,322 | 12/ 6/48 | 173.73 | 312 | Roosevelt S. Nance |
| 11,115,657 | 3/16/49 | 233.10 | 415 | Charlie T. Nash |
| 18,435,030 | 12/23/48 | 193.91 | 312 | Taney H. Peltier |
| 10,261,110 | 3/22/49 | 132.05 | 415 | E. I. & G. T. Price |
| 10,303,672 | 3/ 4/49 | 136.80 | 412 | John E. Quincy |
| 18,435,029 | 12/23/48 | 100.31 | 312 | Harvey P. Rester |
| 18,435,025 | 12/23/48 | 179.43 | 312 | Tileo C. Romero |
| 10,433,673 | 3/18/49 | 185.30 | 412 | Richard L. Samuels |
| 11,004,401 | 3/ 8/49 | 211.15 | 415 | James F. Smith |
| 18,435,024 | 12/23/48 | 79.38 | 312 | Dudley C. Starks |
| 10,997,921 | 3/ 7/49 | 133.10 | 415 | George E. Starks |
| 10,434,515 | 3/18/49 | 84.00 | 412 | Mannie C. Taylor |
| 11,046,696 | 3/10/49 | 139.75 | 415 | Albert T. Thomas |
| 18,372,320 | 12/ 6/48 | 187.89 | 312 | Emanuel G. Thomas |
| 10,481,380 | 3/23/49 | 200.10 | 412 | Leonard F. Watson |
| 10,369,456 | 3/14/49 | 132.95 | 412 | George Williams |
| 10,328,972 | 3/ 8/49 | 123.05 | 412 | Henry O. Williams |
| 11,050,700 | 3/11/49 | 173.00 | 415 | Singer D. Woods |

VII.

That on the dates listed in paragraph V above the defendant, Security-First National Bank of Los Angeles, presented said checks to the plaintiff, through the Los Angeles Branch of the Federal Reserve Bank of San Francisco, fiscal agent of the Treasurer of the United States, with the names of the payees listed in paragraph VI above written upon the backs thereof, and with the [6] endorsements thereon of the defendant, Security-First National Bank of Los Angeles, in the manner and words and figures as shown on the reverse side of said "Exhibit A", said defendant's aforesaid endorsement, including the words "Prior Endorsements Guaranteed".

VIII.

That thereupon the plaintiff, through the said Federal Reserve Bank of San Francisco, relying upon the said guarantees by the defendant, Security-First National Bank of Los Angeles, that the names written upon the backs of said checks were the genuine signatures and endorsements of the payees, and relying upon the representation by the said defendant that it had valid title to said checks, paid the amounts thereof to the defendant, Security-First National Bank of Los Angeles.

IX.

That the said names of the payees set forth in paragraph VI above were the names of fictitious and nonexistent persons; that the plaintiff had no knowledge of the foregoing either at the time the aforesaid checks were issued or at the time plaintiff paid the amount thereof to the defendant, as aforesaid.

X.

That the names of the said payees endorsed upon the aforesaid checks were forged and had been wrongfully and fraudulently written upon the same by persons other than the named payees who were fictitious and nonexistent persons, as aforesaid.

XI.

That the payments of said checks paid by the plaintiff to the defendant as described in paragraph VIII of this complaint were made under a mistake of fact and without knowledge that the signatures

of the said payees thereon had been forged upon the [7] back of said checks, and that the said payees were fictitious and nonexistent persons.

XII.

That the names of the payees written upon the backs of said checks were not the genuine signatures and endorsements of payees named upon the face of said checks, nor did said defendant receive said checks from the payees thereon named; in truth and in fact the purported endorsements were forgeries and the defendant, Security-First National Bank of Los Angeles, when it presented said checks and received payment of the amounts thereof, as aforesaid, had no valid or legal title to said checks.

XIII.

That upon discovery of the aforesaid forgeries and the want of title of the defendant, Security-First National Bank of Los Angeles, the plaintiff, through the said Federal Reserve Bank of San Francisco, gave notice thereof to the said defendant and demanded the return of the sums paid to said defendant upon said checks, but the said defendant refused to repay to the plaintiff the said sums or any part thereof.

XIV.

That prior to the commencement of this action the plaintiff demanded from said defendant the sums above mentioned, but the said defendant has failed, neglected and refused, and still fails, neglects

and refuses, to repay to the plaintiff the said sums or any part thereof. The whole thereof in the amounts listed in paragraphs V and VI, together with interest thereon at the rate of six per cent per annum from the dates set forth in paragraph V of this complaint, is now due, owing and unpaid to the plaintiff from the defendant. [8]

Wherefore, plaintiff prays judgment against the defendant, Security-First National Bank of Los Angeles, in the sum of \$9,719.15, together with interest thereon at the rate of six per cent per annum, and for its costs incurred herein, and for such other and further relief as to this Honorable Court may seem meet, just and proper in the premises.

LAUGHLIN E. WATERS,

United States Attorney,

MAX F. DEUTZ,

Assistant U. S. Attorney,

Chief of Civil Division,

EDWIN H. ARMSTRONG,

Assistant U. S. Attorney,

/s/ EDWIN H. ARMSTRONG,

Attorneys for Plaintiff. [9]

EXHIBIT "A"

SAN FRANCISCO, CALIF. 18,435,026[✓]

12 Treasurer of the United States

THROUGH FEDERAL RESERVE BANK OF SAN FRANCISCO ¹¹⁻³⁷/₀₀₀ DEC 23 1948

PAY TO THE ORDER OF **HOMER C ALEXANDER** **PAID**

1711 WEST JEFFERSON BLVD
LOS ANGELES CALIF

166030

19 JAN 9
Paul D. Banning
73 CHIEF DISBURSING OFFICER

DO NOT FOLD, SPINDLE OR MUTILATE
KNOW YOUR ENDORSER - REQUIRE IDENTIFICATION 312

The type should appear below on ink or indelible pencil.

If the endorsement is made in pencil, the note must be returned to the issuing office with the giving their place of payment in full.

It is required that this note be promptly negotiated.

Homer C. Alexander
Alma L. Lee Realty
1711 W. Jefferson Blvd.

JAN 5 1949

SAN FRANCISCO, CALIF. 1-12 10,393,893

12 Treasurer of the United States

THROUGH FEDERAL RESERVE BANK OF SAN FRANCISCO ¹¹⁻³⁷/₀₀₀ MAR 16 1949

PAY ***200 DOLLARS 45 CTS ***200.45*

TO THE ORDER OF LESLIE C & LILA L ALLEN
1711 WEST JEFFERSON BLVD
LOS ANGELES 7 CALIF

PATG 26 MAR 9

DO NOT FOLD, SPINDLE OR MUTILATE
KNOW YOUR ENDORSER . . REQUIRE IDENTIFICATION

412

The payee should endorse below in ink or indelible pencil.

If the endorsement is made by mark (X) it must be witnessed by two persons who can write, giving their places of residence in full.

It is suggested that this check be promptly negotiated.

Leslie C. Allen
Lila L. Allen
1711 West Jefferson

JEPPELTON & ALLEN
1-12-49
16-25
PAY TO THE ORDER OF
ANY BANK OR BANKER
OR THROUGH
LOS ANGELES CLEARING HOUSE
THROUGH FIRST NATIONAL BANK
101 Los Angeles 16-3

1-12

copy
to
Hester.

EASURY
SION OF
URSEMENT



TAX REFUND

ABOVE OBJECT

SAN FRANCISCO, CALIF.,

1-47

10,393,985

12

Treasurer of the United States

THROUGH FEDERAL RESERVE BANK OF SAN FRANCISCO

11-37
000

MAR 16 1949

PAY \$***153 DOLLARS 15 CTS

\$***153.15*

TO THE
ORDER OF

GEORGE H & THERESA P JEFFERSON
1711 WEST JEFFERSON BLVD
LOS ANGELES 7 CALIF

PAID

5 APR 9



DO NOT FOLD, SPINDLE OR MUTILATE

KNOW YOUR ENDORSE - - REQUIRE IDENTIFICATION

412

passes you should require full identification
and endorsement in your presence as claims
against endorser may otherwise result.

The upper should endorse below in ink
or indelible pencil.

If the endorsement is made by mark (X) it
must be witnessed by two persons who can write,
giving their places of residence in full.

It is suggested that this check be promptly
negotiated.

George H. Jefferson
Theresa P. Jefferson

26. PAY TO THE ORDER OF
SECURITY FIRST NATIONAL
BANK OF LOS ANGELES
A FINE LEE'S REALTY CO.

1-47

CARRY OVER
OF
REMENT

12

1-25

SAN FRANCISCO, CALIF.

10,434,520

Treasurer of the United States

11-37
000

MAR 18 1949

THROUGH FEDERAL RESERVE BANK OF SAN FRANCISCO

PAY ***116 DOLLARS 97 CTS ***116.97**

TO THE ORDER OF

JACK T JOHNSON
224 E 28TH ST
LOS ANGELES 11 CALIF

PAID A

2 APR 9

179 REGIONAL DISBURSING OFFICER

DO NOT FOLD, SPINDLE OR MUTILATE

KNOW YOUR ENDORSER . . REQUIRE IDENTIFICATION

412

endorse below in ink

is made by mark (X) if

persons who can write

signature in full

this check be promptly

PAY TO THE ORDER OF ANY BANK

LOS ANGELES

SECURITY FIRST NATIONAL BANK

OF LOS ANGELES 16-3

1-25



[Title of District Court and Cause.]

ANSWER OF DEFENDANT SECURITY-
FIRST NATIONAL BANK, A NATIONAL
BANKING ASSOCIATION

Comes now defendant Security-First National Bank, a National Banking Association, and for answer to plaintiff's complaint admits, denies and alleges as follows:

I.

Admits the allegations of paragraph I of plaintiff's complaint and alleges that this court also has jurisdiction of this action by virtue of the provisions of Title 28, Section 1348, United States Code.

II.

Admits the allegations of paragraph II of plaintiff's complaint.

III.

Admits the allegations of paragraph III of plaintiff's complaint, except that it alleges that the name of this defendant [30] has been changed since the filing of plaintiff's complaint to Security-First National Bank, and alleges that the true name of this defendant is now "Security-First National Bank."

IV.

Defendant here answering is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph IV of plaintiff's complaint.

V.

Denies the allegations of paragraph V of plaintiff's complaint.

VI.

Admits the allegations of paragraph VI of plaintiff's complaint, and alleges in that regard that each and all of the payees therein listed were fictitious and nonexistent persons but were represented to the Government as being actual existing persons by an impostor or impostors and were considered as actual existing persons by the Government.

VII.

Admits the allegations of paragraph VII of plaintiff's complaint.

VIII.

For answer to paragraph VIII of plaintiff's complaint, defendant denies, each, every and all of the allegations contained and set forth in said paragraph, except that defendant admits that the amounts referred to in said paragraph of plaintiff's complaint were paid to defendant.

IX.

Admits the allegations of paragraph IX of plaintiff's complaint, but in this connection alleges that plaintiff had in its possession and at its disposal all the information and means necessary to readily ascertain that all such named payees were fictitious and nonexistent in fact, which plaintiff failed and [31] neglected to make use of.

X.

Denies the allegations of paragraph X of plaintiff's complaint, except that defendant admits that the payees named in said checks were fictitious and nonexistent persons, but alleges that the actual persons endorsing said checks were the same persons intended by the Government to be the payees in said checks and the same persons as were intended by the Government to endorse said checks.

XI.

Denies the allegations of paragraph XI of plaintiff's complaint, except that defendant admits that the said payees listed in said checks were fictitious and nonexistent persons.

XII.

Denies the allegations of paragraph XII of plaintiff's complaint.

XIII.

For answer to paragraph XIII of plaintiff's complaint, admits that on or about March 25, 1952 plaintiff gave notice to defendant and demanded the return of the amount of said checks, including two other checks since withdrawn from claim by the Government, and admits that defendant refused and continues to refuse to pay to the plaintiff the sums alleged in said paragraph XIII or any part thereof.

XIV.

For answer to paragraph XIV of plaintiff's complaint, admits and alleges that on or about July

29, 1954 plaintiff demanded the return of the amount of said checks, and admits that defendant refused and still refuses to pay to plaintiff the amount of said checks or any part thereof. Denies each, every and all of the other allegations of said paragraph. [32]

First Affirmative Defense

For a separate, distinct and affirmative defense to plaintiff's complaint, defendant alleges that said complaint fails to state a claim upon which relief can be granted against the defendant.

Second Affirmative Defense

For a second separate, distinct and affirmative defense to plaintiff's complaint, defendant alleges as follows:

1. Defendant is informed and believes and upon such information and belief alleges that prior to the issuance of said checks referred to in paragraph VI of plaintiff's complaint, one or more persons then unknown to both plaintiff and defendant but using the respective names as are listed in said paragraph VI as payees of said checks, filed with the plaintiff income tax returns in each of said respective names showing overpayments of income tax in the respective amount as to each payee set forth in paragraph VI of plaintiff's complaint.

2. Defendant is informed and believes and upon such information and belief alleges that upon receipt of said tax returns and without first checking

its records to ascertain whether the taxes claimed in said returns to have been paid to plaintiff had in fact been paid, and relying wholly upon said tax returns and accepting said tax returns as genuine, although in fact false and fraudulent and the work of an impostor, or impostors, plaintiff issued the respective checks described in paragraph VI of plaintiff's complaint to said fictitious and nonexistent payee taxpayers whom the Government considered existed in fact and which the Government had concluded were entitled to a refund as claimed.

3. Defendant is informed and believes and upon such information and belief alleges that to effectuate the intended refund aforesaid, the plaintiff, after issuing said respective checks, [33] caused the same to be mailed to the respectively named payees at their addresses as set out in said income tax returns with the belief and intention that each person named as payee in said checks would receive the benefits therefrom.

4. Defendant is informed and believes and upon such information and belief alleges that each of said checks was endorsed by the person who signed the tax return showing the overpayment to cover which the check was issued and that each of the checks described in paragraph VI of plaintiff's complaint was endorsed by the person who plaintiff intended to be the payee thereof, and that none of the endorsements on said checks was or is a forgery.

Third Affirmative Defense

1. Defendant incorporates by this reference the allegations contained and set forth in paragraphs 1 to 4 inclusive of the allegations contained in defendant's Second Affirmative Defense as fully as though set forth herein.

2. Defendant alleges that in failing to ascertain, from sources and information within plaintiff's possession and readily at hand and available, whether a return had been filed by the specified employer, or the named fictitious and nonexistent payee was in fact an employee, or whether such payee was entitled to a refund for taxes claimed in said income tax returns to have been paid to plaintiff or whether such taxes had in fact been paid, plaintiff was negligent, and that its negligence in this regard proximately caused the loss suffered by the plaintiff and not any action or nonaction by the defendant handling said Government checks in the regular course of business, and as between the respective parties plaintiff should stand said loss. [34]

Fourth Affirmative Defense

For a fourth separate, distinct and affirmative defense to plaintiff's complaint, defendant alleges that the claim of plaintiff alleged in its complaint is barred by the laches of plaintiff in this, that any alleged reliance placed by plaintiff upon the endorsement and guaranty contained in said endorsement of the checks as referred to in paragraph VIII is barred by laches, and plaintiff is estopped

and debarred from making the claim referred to in plaintiff's complaint, for the reason that plaintiff first knew that the income tax returns filed with the plaintiff were false and fraudulent prior to October 21, 1949. Despite this, plaintiff did not file its complaint until August 25, 1955, and such long delay has been prejudicial to this defendant, and plaintiff is now estopped and debarred from relying upon any claimed endorsement or guaranty contained in said endorsement of defendant.

Wherefore, defendant prays that plaintiff take nothing by its action, that defendant have judgment for its costs incurred herein against plaintiff, and for such other relief as to the court may seem meet and proper in the circumstances.

FARRAND, FISHER & FARRAND,
ROSS C. FISHER,
KNOX FARRAND,
STEPHEN M. FARRAND,

/s/ By ROSS C. FISHER,

Attorneys for Defendant. [35]

Acknowledgment of Service Attached. [36]

[Endorsed]: Filed April 18, 1958.

[Title of District Court and Cause.]

STIPULATION OF FACTS AND ORDER

It Is Hereby Stipulated, subject to the approval of the Court, by and between counsel for plaintiff Laughlin E. Waters, United States Attorney, Rich-

ard A. Lavine and Burton C. Jacobson, Assistant United States Attorneys, and Farrand, Fisher & Farrand by Ross C. Fisher, counsel for defendant Security-First National Bank, formerly and sued herein as Security-First National Bank of Los Angeles, that the following facts are admitted:

I.

Unknown to either plaintiff or defendant on or about the year 1949 and prior thereto a scheme was entered into to defraud the Government whereby certain persons, namely, Arthur H. Lange, Aline Lange Lee, a real estate broker of Los Angeles, and her son and other members of her family caused to be prepared fictitious W-2 [37] forms concerning salary and tax withheld listing alleged employers, and they then filed income tax returns with said W-2 forms attached in the respective fictitious names. These returns and forms were prepared in such a way as to indicate that a refund on income tax was due and payable to the respective fictitious persons appearing on said returns. The said persons did not use their own names, but used fictitious names in all instances on the returns and showed addresses for said fictitious persons.

II.

Said income tax returns and withholding statements were filed by the said persons with the District Director of Internal Revenue. Upon receipt of said income tax returns and withholding statements, the District Director of Internal Revenue,

(1) without first checking his records to ascertain whether the taxes claimed to have been paid in said returns and withholding statements had in fact been paid or ascertaining any other facts with respect thereto,

(2) without any investigation or checking of his records with respect to any of said returns or withholding statements,

ordered payment of refunds to said fictitiously named persons; the refund checks were drawn and made payable to and were mailed to the respective fictitiously named persons appearing on and who signed the income tax returns and withholding statements at the addresses shown on the returns. There is involved in this action fifty-eight (58) such checks aggregating \$9,719.15. Said checks are listed, setting forth the check number, the date of issuance, the amount, symbol and name of payee of each check, in paragraph VI of plaintiff's complaint; annexed thereto and marked Exhibit A are photostatic copies of said checks. Said list and the photostatic copies of said checks are incorporated by reference herein and made a part hereof as though fully set forth. [38]

III.

Each of said checks was endorsed by the person who signed the tax return showing the overpayment, to cover which the check was issued to said fictitiously named person and which was then nego-

tiated and in the course of business cashed by the defendant bank. Upon receipt and encashment of the said checks by the defendant bank, the checks were thereafter endorsed by said bank in normal course of business with a statement thereon "All prior endorsements guaranteed" and were presented for payment and they were paid by the Government's fiscal agent.

IV.

Upon discovery that a fraud had been committed the plaintiff gave notice thereof as to all checks involved herein to defendant and demanded that the amounts paid to the bank by the Government's fiscal agent be refunded.

V.

On or about April 1, 1952 defendant by a letter addressed to the Treasury Department refused payment on the demand for refund on the checks herein involved and defendant has continuously refused payment on the subsequent demands for refund on the checks herein involved.

It Is Further Stipulated that there are no pertinent facts other than those above mentioned, pertaining to the issuance, negotiation and payment of the checks involved herein and both plaintiff and defendant agree that a trial as to the facts is not necessary and that the court may consider this matter as if the same had been tried and all the above stated facts had been found to be true.

It Is Further Stipulated that the matter is deemed submitted to the court for decision. [39]

Dated this 2nd day of May, 1958.

LAUGHLIN E. WATERS,
United States Attorney,
RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division,
/s/ BURTON C. JACOBSON,
Assistant U. S. Attorney,
Attorneys for Plaintiff.

FARRAND, FISHER &
FARRAND,
ROSS C. FISHER,
KNOX FARRAND,
STEPHEN M. FARRAND,
/s/ By ROSS C. FISHER,
Attorneys for Defendant.

It Is So Ordered: This 12th day of May, 1958.

/s/ WM. M. BYRNE,
United States District Judge. [40]

[Endorsed]: Filed May 12, 1958.

United States District Court, Southern District
of California, Central Division

Civil No. 18659-WB

UNITED STATES OF AMERICA, Plaintiff,

vs.

SECURITY-FIRST NATIONAL BANK OF LOS
ANGELES, a national banking association,
Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

The above entitled case, pursuant to stipulation of facts entered into between the parties hereto and order thereon filed herein May 12, 1958, was submitted to this court for decision, plaintiff appearing in the action by Laughlin E. Waters, United States Attorney, Richard A. Lavine and Burton C. Jacobson, Assistant United States Attorneys, and defendant appearing by Ross C. Fisher of Farrand, Fisher & Farrand, attorneys, and the court having considered all of the pleadings and said stipulation of facts, and being fully advised in the premises, makes herein its Findings of Fact, Conclusions of Law and Judgment as follows:

Findings of Fact

1. Plaintiff, United States of America, herein sometimes referred to as the "Government", was

at all times herein mentioned and is now a body politic and corporation sovereign. [41]

2. Defendant, Security-First National Bank, at all times herein mentioned was and now is a national banking association, having its principal place of business in the Southern District of California and within the jurisdiction of this court. It was originally sued herein by its former name, Security-First National Bank of Los Angeles. Subsequent to the filing of the complaint its name was duly and regularly changed to and now is Security-First National Bank.

3. This suit is one of a civil nature, commenced by the United States of America, plaintiff, to recover amounts paid by its fiscal agent on checks drawn and issued by the Internal Revenue Service subsequently endorsed and presented for payment to said agent.

4. The Internal Revenue laws of the United States at all times herein mentioned provided and do now provide that employees shall receive at the end of each calendar year "W-2" forms from each employer, indicating thereon the amount of income paid by the employer to the employee, the amount of Social Security withheld, and the amount of income tax withheld, and at the end of each calendar year on or before the filing date for income tax returns the employee prepares an income tax return attaching thereto copies of said "W-2" form. That in the event the amount of income tax withheld during the calendar year exceeds the amount of in-

come tax due and owing by the employee the employee indicates that the money shall either be applied to the ensuing year's income tax or be refunded to the employee.

5. Unknown to either plaintiff or defendant, on or about the year 1949 and prior thereto a scheme was entered into to defraud the Government, whereby Arthur H. Lange, Aline Lange Lee, a real estate broker of Los Angeles, and her son, and other members of her family, caused to be prepared fictitious "W-2" forms concerning salary and tax withheld, listing alleged employers, and they then [42] filed income tax returns with said "W-2" forms attached in the respective fictitious names. These returns and forms were prepared in such a way as to indicate that a refund on income tax was due and payable to the respective fictitious persons appearing on said returns. The said persons did not use their own names but used fictitious names in all instances on the returns and showed addresses for said fictitious persons.

6. Said income tax returns and withholding statements were filed by said persons with the District Director of Internal Revenue. Upon receipt of said income tax returns and withholding statements the District Director of Internal Revenue,

(1) Without first checking his records to ascertain whether the taxes claimed to have been paid in said returns and withholding statements had in fact been paid, or ascertaining any other facts with respect thereto, and

(2) Without any investigation or checking of his records with respect to any of said returns or withholding statements ordered payment of refunds to said fictitiously named persons.

The refund checks were drawn and made payable to and were mailed to the respective fictitiously named persons appearing on and who signed the income tax returns and withholding statements at the addresses shown on the returns. Fifty-eight of such checks, aggregating \$9,719.15, were so drawn and mailed. Said checks are listed, setting forth the check number, date of issuance, amount involved, and name of payee of each check, in plaintiff's complaint, and photostatic copies of said checks are annexed thereto as Exhibit A. Said list and said photostatic copies are incorporated by reference herein and made a part of these findings.

7. Each of said checks was endorsed by the person who signed the tax return showing the overpayment, to cover which the check was [43] issued to said fictitiously named person, which was then negotiated and in the course of business cashed by defendant bank. Upon receipt and encashment of said checks by the defendant bank, the checks were thereafter endorsed by said bank in the normal course of business with the statement thereon "All prior endorsements guaranteed", and were presented for payment and they were paid by the Government's fiscal agent.

8. Upon discovery that a fraud had been com-

mitted plaintiff gave notice thereof to defendant as to all checks involved to date, and demanded that the amounts paid to the defendant bank by the Government's fiscal agent, namely the sum of \$9,719.15, be refunded, but said defendant has at all times refused to refund said amounts.

From the foregoing Findings of Fact the court makes the following Conclusions of Law:

Conclusions of Law

1. This court has jurisdiction over the subject matter hereof and of the parties hereto pursuant to Title 28 United States Code, Sections 1345 and 1348.

2. The defendant bank is not liable to the plaintiff upon its guaranty of all prior endorsements as such prior endorsements were not forged endorsements as claimed by plaintiff.

3. The United States of America is therefore not entitled to judgment against the defendant bank as contended in the prayer of the complaint, and the defendant is entitled to judgment in its favor and against the United States of America.

Judgment

In accordance with the foregoing Findings of Fact and Conclusions of Law, It Is Ordered, Adjudged and Decreed:

1. That plaintiff, United States of America, take nothing by its said action, and that judgment be

and the same is hereby entered [44] in favor of defendant Security-First National Bank against plaintiff.

Dated at Los Angeles, California, this 2nd day of June, 1958.

/s/ WM. M. BYRNE,
United States District Judge.

Approved as to form:

LAUGHLIN E. WATERS,
United States Attorney,
RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division,
BURTON C. JACOBSON,
Assistant U. S. Attorney,
/s/ By BURTON C. JACOBSON,
Assistant U. S. Attorney. [45]

Acknowledgment of Service Attached. [46]

[Endorsed]: Filed and Entered June 2, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the United States of America, the plaintiff above-named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on June 3, 1958.

Dated at Los Angeles, California, this 25th day of July, 1958.

LAUGHLIN E. WATERS,
United States Attorney,
RICHARD A. LAVINE,
Asst. U. S. Attorney,
Chief, Civil Division,
/s/ BURTON C. JACOBSON,
Asst. U. S. Attorney,
Attorneys for Plaintiff. [46]

Affidavit of Service Attached. [47]

[Endorsed]: Filed July 25, 1958.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled matter:

A. The foregoing pages numbered 1 to 50, inclusive, containing the original:

Complaint.

Answer.

Stipulation of Facts and Order.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Appeal.

Designation of Record on Appeal.

I further certify that my fee for preparing the foregoing record, amounting to \$1.60, has not been paid by appellant.

Dated: August 27, 1958.

[Seal] JOHN A. CHILDRESS,
 Clerk,

/s/ By WM. A. WHITE,
 Deputy Clerk.

[Endorsed]: No. 16165. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Security-First National Bank, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed and Docketed: August 28, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
For The Ninth Circuit

CA No. 16165

UNITED STATES OF AMERICA, Appellant,

vs.

SECURITY-FIRST NATIONAL BANK OF LOS
ANGELES, a national banking association,
Appellee.

APPELLANT'S STATEMENT OF POINTS ON
APPEAL AND DESIGNATION OF REC-
ORD TO BE PRINTED

The appellant hereby designates the following
Points on Appeal in the above-entitled matter:

1. The district court erred in holding that defendant bank was not liable to the United States upon its guarantees of prior endorsements.
2. The district court erred in entering judgment for defendant bank.

Appellant Hereby Designates the following record to be printed in the above-entitled matter:

1. Complaint for money on forged checks (Treasury), filed August 25, 1955, including the checks, which are part of Exhibit A to the complaint, to the order of the following payees:

- a. Homer C. Alexander, Check No. 18,435,026;
- b. Leslie C. and Lila L. Allen, Check No. 10,-393,893;
- c. George H. and Theresa P. Jefferson, Check No. 10,393,985;
- d. Jack T. Johnson, Check No. 10,434,520;
2. Answer of defendant Security-First National Bank, filed April 18, 1958;
3. Stipulation admitting facts and order, filed May 12, 1958;
4. Findings of fact, conclusions of law and judgment, filed June 3, 1958;
5. Notice of appeal.

Dated: This 8th day of September, 1958.

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Asst. U. S. Attorney,
Chief, Civil Division,

/s/ BURTON C. JACOBSON,
Asst. U. S. Attorney,
Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed September 10, 1958. Paul P. O'Brien, Clerk.

